

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

CHELSEA SHUBAT and ALLISON R. SHUBAT,
Plaintiff,

Case No.: 19-CV-588

v s.

CAVE ENTERPRISES OPERATIONS, LLC
D/B/A BURGER KING OF ASHLAND,
Defendant.

AGREED ORDER STAYING ENFORCEMENT OF JUDGMENT

This matter came before the Court upon the parties', Chelsea Shubat and Allison R. Shubat ("Plaintiffs") and Defendant Cave Enterprises Operations, LLC d/b/a Burger King of Ashland ("Defendant") (collectively, the "Parties") stipulation to stay the execution of the final default judgment entered in this matter on October 9, 2019 ("Judgment"). The stay is predicated upon Defendant's provision of an irrevocable stand-by letter of credit (the "Letter of Credit") in the amount of \$438,000.00 issued Wells Fargo Bank, N.A., naming Plaintiffs as beneficiary. The Parties agree that the Letter of Credit sufficiently protects Plaintiffs' interest in the Judgment, and warrants issuance of a stay pursuant to Federal Rule of Civil Procedure 62(d).

THE COURT BEING OTHERWISE ADVISED IN THE PREMISES:

1. IT IS HEREBY AGREED AND ORDERED that the Letter of Credit is approved as an agreed security for the Judgment under Fed. R. Civ. P. 62 during post-judgment and appellate proceedings in this matter and Defendant shall procure and cause the same to be delivered to Plaintiff's counsel within ten (10) days of the entry of this Order.

2. IT IS FURTHER AGREED AND ORDERED that Plaintiffs may make demands for payment on the Letter of Credit, and shall be entitled to the proceeds thereof up to but not exceeding the unpaid amount of the Judgment (as may be amended by the Court or the United States Court of Appeals for the Seventh Circuit), without further order of this Court and consistent with the terms of the Letter of Credit upon the occurrence of one or more of the following events ("Demand Events"):

- a. If Defendant does not deliver an original Letter of Credit in accordance with paragraph 1, one (1) business day following the last day to make such delivery;
- b. If Defendant does not take any appeal from the Judgment that would affect the Judgment, five (5) business days following the last day to appeal;
- c. If Defendant takes an appeal affecting the Judgment and as a result the United States Court of Appeals for the Seventh Circuit issues a mandate affirming or modifying the Judgment without remanding any part of the case, five (5) business days following the issuance of the mandate; or
- d. If, within thirty (30) days or less prior to the expiration of the Letter of Credit or any other circumstance that could reasonably cause the Letter of Credit to be unenforceable in full accordance with its terms and the terms of this Order, Plaintiffs have not been provided with delivery of a replacement letter of credit containing terms that are the same in all material respects to the Letter of Credit. The Demand Event in this paragraph 2(d) shall apply even if any appeal taken from the Judgment remains pending at the time Plaintiffs make their demand for payment on the Letter of Credit.
- e. If Defendant takes an appeal affecting the Judgment and as a result the United States Court of Appeals for the Seventh Circuit remands any part of the case to the District Court for further proceedings, then the provisions for paragraphs 2(b)-2(d) shall be applied to the judgment entered following such further proceedings; provided, however, that if the Judgment is vacated at any time, the Letter of Credit may be terminated.

3. IT IS FURTHER AGREED AND ORDERED, that upon occurrence of any of the events set out in paragraph 2(a)-(d), taking into account paragraph 2(e), Plaintiffs may at their discretion seek to execute on the Judgment by any means permitted by law, including without limitation by drawing on the Letter of Credit, but Plaintiffs are not limited to execution on the Letter of Credit. Should Plaintiffs choose to draw on the Letter of Credit following such events, Plaintiffs shall file with this Court a notification of their intent to make a demand for payment on

the Letter of Credit one (1) business day prior to making such demand. Upon occurrence of the events set out in paragraph 2(b) or 2(d), taking into account paragraph 2(e), Plaintiffs shall be entitled to draw upon the Letter of Credit up to the maximum amount of the Judgment (as it may be modified and/or amended as on such date), plus post-judgment interest thereon pursuant to 28 U.S.C. § 1961. If an occurrence set out in paragraph 2(c), taking into account paragraph 2(e), is the first event to occur under paragraph 2, Plaintiffs shall be entitled to draw on the Letter of Credit as to that portion of the Judgment which has been affirmed by the United States Court of Appeals for the Seventh Circuit. In the event this Court or the United States Court of Appeals for the Seventh Circuit reduces the amount of the Judgment, Defendant may provide a replacement letter of credit in the amount of the reduced judgment but otherwise with the same terms as the original Letter of Credit authorized by this Order. The provisions of paragraphs 2-3 of this Order shall apply to the reduced judgment.

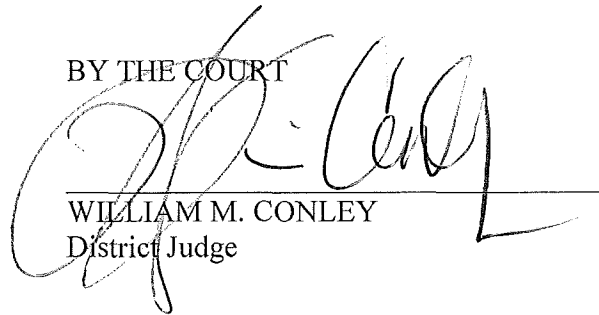
4. IT IS FURTHER AGREED AND ORDERED that, so long as (i) Defendant and the issuer of the Letter of Credit maintain the Letter of Credit in compliance with the above terms of this Order and (ii) no Demand Events authorizing a payment demand to be made on the Letter of Credit have occurred, execution of or on Judgment is stayed and no execution may issue on the Judgment nor may any proceedings be taken to enforce the Judgment during post-judgment or appellate proceedings in this matter, other than as authorized in this Order. Nothing in this paragraph shall preclude Plaintiffs from drawing upon the Letter of Credit consistent with the terms of this Order. In the event that Defendant does not maintain the Letter of Credit in compliance with the terms above, or the bank issuing the Letter of Credit fails to honor a payment demand thereunder for any reason, no stay applies and execution on the Judgment may commence without further Order of this Court.

IT IS FURTHER AGREED AND ORDERED that, upon a showing of good cause, any party may request that the Court modify or enforce the terms of this Order and this Court retains jurisdiction to resolve any disputes concerning this Order.

IT IS SO ORDERED.

Entered this 12th day of February, 2021.

BY THE COURT



WILLIAM M. CONLEY
District Judge